

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**THOMAS J. CAPANO,**

Petitioner,

v.

Civ. Act. No. 06-58-\*\*\*

**THOMAS L. CARROLL,**

Warden, and **JOSEPH R. BIDEN, III,**  
Attorney General for the State of Delaware,

Respondents.

**MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answering brief. In support thereof, respondents state the following:

1. The petitioner, Thomas J. Capano, has applied for federal habeas relief, challenging his 1999 conviction by a Delaware Superior Court jury for first degree murder. D.I. 1. By the terms of the Court's order of July 16, 2007, an answering brief is due to be filed on July 27, 2007.

2. Counsel for respondents have completed substantial portions of the answering brief. Because, however, the Chief of Appeals was ill several days during the last two weeks, the brief has not been completed and reviewed. Consequently, counsel will need a few additional days to complete and review the answering brief.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9<sup>th</sup> Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various

factors such as the respondents' workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' fifth request for an extension of time to file an answering brief.

5. Respondents submit that an extension of time to and including July 31, 2007 in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Loren C. Meyers  
Chief of Appeals Division  
Del. Bar. ID No. 2210

/s/ Elizabeth R. McFarlan  
Deputy Attorney General  
Del. Bar. ID No. 3759

Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500

DATE: July 27, 2007

**RULE 7.1.1 CERTIFICATION**

I hereby certify that counsel for the petitioner, Joseph M. Bernstein, Esquire, was not available when counsel for respondents attempted to contact him, and thus counsel for respondents are unaware of Mr. Bernstein's position as to the subject matter of this motion.

/s/ Elizabeth R. McFarlan  
Deputy Attorney General

Counsel for Respondents

Date: July 27, 2007

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**THOMAS L. CARROLL,**

Warden, and **JOSEPH R. BIDEN, III,**  
Attorney General for the State of Delaware,

Respondents.

**ORDER**

This \_\_\_\_ day of \_\_\_\_\_, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer,  
and

WHEREAS, it appearing to the Court that the requested extension is timely made and good  
cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answering brief shall be filed on or before July  
31, 2007.

\_\_\_\_\_  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on July 27, 2007, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF which will send notification of such filing to:

Joseph M. Bernstein, Esq.  
800 North King Street, Suite 302  
Wilmington, DE 19801

/s/ Elizabeth R. McFarlan  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
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